

Serial No. 10/715,376
Docket No. YOR920030332US1

there would be some undue burden if the Examiner examined claims 28-29 together with claims 1-27 and 30-33.

Indeed, MPEP §802.01 provides that the Examiner has the initial burden of making a prima facie showing that there would be a serious burden on the Examiner if he examined claims 28-29 together with claims 1-27 and 30-33. MPEP §802.01 further states that "a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search". However, **nowhere has the Examiner made such an allegation of serious burden.**

Therefore, Applicant submits that the Examiner has clearly failed to support his restriction between the invention of claims 28-29 and the invention of claims 1-27 and 30-33. Therefore, the Examiner is respectfully requested to withdraw this restriction requirement.

II. THE ELECTION OF SPECIES REQUIREMENT

The Examiner attempts to restrict the claims between species A, B, C, D and E. However, the Examiner has failed to present sufficient evidence that the alleged species are "distinct".

Specifically, MPEP §803 states that "**Examiners must provide reasons and/or examples to support conclusions**" (emphasis added). Here, however, the Examiner merely states that the alleged species are "patently (sic) distinct", and provides no support for this conclusion.

Indeed, MPEP §802.01 defines the term "distinct" as meaning that two or more subjects as claimed are **not** connected in at least one of design, operation, or effect (e.g., can be made by, or used in, a materially different process) and wherein at least one invention is **PATENTABLE** (novel and nonobvious) **OVER THE OTHER**. However, nowhere has Examiner alleged that the alleged "species" of Figures 1A, 1C, 1D, 1E, 1F, 2A, and 2B are **not** connected in at least one of design, operation, or effect (e.g., can be made by, or used in, a materially different process) and at least one invention is **PATENTABLE** (novel and nonobvious) **OVER THE OTHER**.

Second, even assuming (arguendo) that the alleged "species" are distinct, the Examiner has not even alleged that there would be some undue burden if the Examiner examined claims 1-17 and 30-33 together. Applicant respectfully submits that the Examiner **MUST MAKE A PRIMA FACIE CASE OF SERIOUS BURDEN** to support the election of species requirement.

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Applicant would again point out that MPEP §802.01 states that "a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search". However, **nowhere has the Examiner made such an allegation.**

Therefore, Applicant submits that the Examiner has clearly failed to support his election of species requirement. Therefore, the Examiner is respectfully requested to withdraw the requirement.

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Assignee's Deposit Account No. 50-0510.

Respectfully Submitted,

Date: 3/7/06

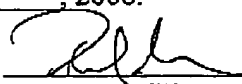


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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing was filed by facsimile with the United States Patent and Trademark Office, Examiner Thinh Nguyen, Group Art Unit # 2818 at fax number (571) 273-8300 this 7th day of March, 2006.



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